

Service Date: August 18, 1998

DEPARTMENT OF PUBLIC SERVICE REGULATION  
BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MONTANA

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IN THE MATTER OF U S WEST	)	UTILITY DIVISION
COMMUNICATIONS, INC., Application for	)	
Forbearance Regarding Montana	)	DOCKET NO. N98.8.175
Communications Network	)	ORDER NO. 6092

ORDER REJECTING FORBEARANCE APPLICATION

On August 4, 1998, U S West Communications, Inc. (USW) filed before the Public Service Commission (PSC) a forbearance application regarding services to Montana Communications Network (MCN). In its application USW states that MCN, a statewide internet provider, has received bids for telecommunications services from Mid-Rivers Telephone Cooperative, Inc. (Mid-Rivers), and has recently requested a competitive bid from USW. On August 5, 1998, Mid-Rivers, filed (by fax, followed by a hard copy) an objection to USW's application and, on August 7, 1998, Mid-Rivers filed (by fax, followed by a hard copy) a letter in further support of that objection. USW replied to Mid-Rivers' objections on August 12, 1998.

Section 69-3-808, MCA, allows forbearance of rate regulation of regulated telecommunication service when such will facilitate competition. According to the statute the PSC shall authorize service under negotiated terms to any person who has acquired or is contemplating acquiring similar service from another source. The statute requires that a forbearance application include an identification of the customer, the competitor, and the services involved. ARM 38.5.2715 (PSC forbearance rule) also requires, in regard to identification of services, a reference to the applicable tariffs and an identification of the market areas to be served. The statute provides that forbearance is automatically effective 15 days from filing unless the PSC rejects the application. The rule provides that forbearance is automatically effective 1 day from filing, unless the application is incomplete, inaccurate, or fraudulent, in which case the

filing is automatically denied. The rule also allows for voiding the 1 day automatic approval, if it later appears that the application is incomplete, inaccurate, or fraudulent. The statute allows the PSC to reject an application for only two reasons – (a) if the filing is incomplete or (2) if the same or similar service is not being offered by an alternative source.

In its application USW identifies the customer and the competitor and lists the following services to be offered: business lines (flat and measured); primary rate ISDN; uniform access solutions; digital switched services; and ancillary features associated with these services. USW also identifies the applicable tariffs as USW's exchange and network services tariffs sections 5, 14, and 15. USW states that the market area to be served is all Montana exchanges served by MCN Internet services.

Mid-Rivers first objects to the PSC's 1 day automatic approval provision. It is not necessary for the PSC to address this objection at this time (given the balance of this order). Time permitting, the PSC might attempt to consider Mid-Rivers' concerns regarding forbearance procedure, but sometime in the future, possibly through rulemaking.

Regarding the substance of USW's application, Mid-Rivers argues that USW's application is incomplete, as USW's application does not specifically described the services to be offered, references "ancillary features" without describing what those are, and MCN's letter requesting competitive bids is vague as to scope. Mid-Rivers also argues that USW's referenced service area, i.e., "Montana exchanges served by MCN," is vague. Mid-Rivers argues that USW's forbearance applies to services for which no competitive bid exists and it applies to all MCN-served Montana exchanges, which is a service area (statewide) for which no competitive bid exists.

In its August 5, 1998, objection Mid-Rivers explained that MCN has inquired of Mid-Rivers only about frame relay services (private line, deregulated) and MCN has inquired of Mid-Rivers only about business lines in Roundup, Baker, and Glendive. Mid-Rivers argues that Glendive is the only one of these exchanges served by USW, and USW already has flexible pricing available there. Therefore, competitive offerings

have not been made in USW's service territories.

In its August 7, 1998, supplement, Mid-Rivers explained events in more detail. Apparently, MCN contacted Mid-Rivers to inquire about T-1 circuits, one between Glendive and Billings and the other between Savage and Glendive, and information on frame relay and ISDN services in all areas in which Mid-Rivers provides such services. Mid-Rivers informed MCN that it could provide pricing only for the portion of the circuit within Mid-Rivers service territory and Mid-Rivers did not provide any pricing or express any ability to provide such service in USW's service territories. Mid-Rivers gave verbal quotes to MCN regarding POTS business lines in the Baker, Sidney, Miles City, and Glendive exchanges. MCN later contacted Mid-Rivers, requesting additional business lines in the Baker exchange, which is not a USW exchange. According to Mid-Rivers, no other services have been requested by or offered to MCN. The apparent primary point of Mid-Rivers' arguments is that forbearance is not allowed for services or service areas unless there is competition for those services and in those service areas. Mid-Rivers suggests that the vast majority of USW's service area is not affected by Mid-Rivers' competition in regard to MCN.

USW replies that Mid-Rivers' referenced T1, ISDN, and POTS lines (frame relay is deregulated and not in issue) are similar to the services USW identified in its application. According to USW T-1 is (or is similar to) Primary Rate ISDN, Uniform Access Solutions, and Digital Switched Service, primary rate ISDN is ISDN, and basic and measured business lines are POTS lines. USW does not appear to reply to the Mid-Rivers statewide argument, unless USW takes the position that forbearance is customer specific, not area specific, which the PSC believes would be an unsound position.

Although it appears that USW has made a threshold showing regarding services to be offered, the service area (i.e., statewide) is not demonstrated to be competitive as a result of Mid-Rivers' competition. Only those areas served by Mid-Rivers and only to the extent that Mid-Rivers has offered competitive service, are there alternative sources for purposes of forbearance. The PSC cannot determine from USW's application

exactly what areas are actually competitive as a result of Mid-Rivers' competitive efforts. It does appear clear, however, that the area does not encompass all "Montana exchanges served by MCN." Therefore the PSC rejects USW's filing on the basis that the same or similar service, particularly to the extent of the service area proposed by USW, is not being offered by an alternative source.

It is possible that USW, and also Mid-Rivers, will consider a request for reconsideration of this order. USW's filing is one that, following amendment and clarification, could be approved, at least to some extent. The forbearance process simply does not seem to allow that type of process. It appears that PSC rejection (for cause) is the only means available to gain the time needed to explore this forbearance filing in sufficient detail to allow an accurate determination.

If reconsideration of this order is requested, the PSC expects that it will be fully supported and that exactly what Mid-Rivers has done and what USW intends to do is clarified. There is some appearance that neither USW nor Mid-Rivers fully understands what the other or MCN has done or is intending to do in regard to competitive services. If reconsideration is to be filed, the PSC suggests that USW and Mid-Rivers discuss the matter to ensure that each understands exactly what the other has done or is intending to do regarding service to MCN. If reconsideration is filed PSC staff is directed to contact USW and Mid-Rivers to discuss (preferably by way of a conference) the matter and determine if there are concerns, including concerns of the PSC, that remain.

Done and dated this 17th day of August, 1998, by a vote of 4-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

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DAVE FISHER, Chair

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NANCY MCCAFFREE, Vice Chair

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BOB ANDERSON, Commissioner

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BOB ROWE, Commissioner

ATTEST:

Ann Purcell  
Acting Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See 38.2.4806, ARM.